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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, – against – CHARLES CARNEGLIA, Defendant.	ORDER PRECLUDING EVIDENCE 08-CR-76

JACK B. WEINSTEIN, Senior United States District Judge:

The government moves *in limine* to preclude the defendant from eliciting trial testimony referencing the fact that the murders of Albert Gelb and Louis DiBono, with which the defendant is now charged, were previously charged against other individuals. *See* Gov't's Mem. Supp. Mots. in Limine, Jan. 14, 2009, Docket Entry ("D.E") No. 1716. The government argues that such evidence is irrelevant as well as potentially prejudicial, confusing and misleading to the jury.

The defendant argues that he should have the right to cross-examine any government witness about statements made in connection with prior prosecutions, and about the reasons why witnesses were not used in prior prosecutions. *See* Def.'s Mem. Opp'n Gov't's Mot., Jan. 16, 2009, D.E. No. 1729. The defendant contends that such evidence may legitimately be used to impeach the credibility of cooperating witnesses by highlighting inconsistencies between crime scenarios presented to this jury and those presented in prior prosecutions of different individuals for the same crimes.

The defendant suggests that a limiting instruction would suffice to alleviate any potential prejudice. *See* Hr'g Tr. 34, Jan. 20, 2009. The government responds that the defense need not be precluded from cross-examining as to statements made by witnesses who testified in previous proceedings so long as the previous proceedings are not specifically identified as trials of other individuals for the same crimes charged against the defendant here. *See id.* at 36.

Relevant evidence is generally admissible; irrelevant evidence is not. Fed. R. Evid. 402. Assuming evidence is relevant, it may still "be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Fed. R. Evid. 403. While a defendant is entitled to cross-examine government witnesses as to inconsistent statements, "the government's charging decisions are not proper subjects for cross-examination and argument." *United States v. Re*, 401 F.3d 828, 832 (7th Cir. 2005). Evidence related to the government's charging decisions may be excluded at trial based on lack of relevance. Even assuming that evidence that certain murders the defendant is now charged with were previously charged against other individuals is relevant, it should not be admitted if the danger of misleading and confusing the jury substantially outweighs any probative value. *See* Fed. R. Evid. 403; *cf. United States v. Amato*, 540 F.3d 153, 165 (2d Cir. 2008) (trial court acted within its discretion under Rule 403 in preventing defendant's use of cross-examination to inform the jury about prior mistrial); *United States v. Rodriguez*, 582 F. Supp. 2d 486, 487 (S.D.N.Y. 2008) (to avoid confusing jurors, defendants precluded from introducing evidence about dismissals of prior charges against them in trial for the same conduct four years later); *United States v. Cook*, 776 F. Supp. 755, 757-59 (S.D.N.Y. 1991) (permitting continued reference to prior trial of same defendant for purposes other than confronting witnesses with their own prior statements would be highly prejudicial to the government and possibly the defendant).

For the reasons stated on the record on January 20, 2009 and in this order, the court precludes the defendant from making inquiry on cross-examination designed to elicit testimony revealing the fact that the murders of Albert Gelb and Louis DiBono were previously charged against other individuals. Assuming such evidence is relevant, the court finds its probative value substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, and waste of time. *See* Fed. R. Evid. 403. Throughout trial, the court will remain mindful of counsel's need to present to the jurors facts from which they may assess the reliability of witnesses. *See United States v. Giovanelli*, 945 F.2d 479, 487 (2d Cir. 1991). The defendant's rights will be protected since his counsel will remain free to question any witness about statements made in connection with prior judicial proceedings without reference to the nature of and parties to those proceedings. If the statements were inconsistent with present testimony and made during a trial under oath, that fact may be elicited as bearing on credibility. The parties shall caution witnesses to stay within these parameters while answering questions posed by counsel.

SO ORDERED.

Jack B. Weinstein
Senior United States District Judge

Dated: January 27, 2009
Brooklyn, New York